

- the Director of Economy, Transport and Environment manage the County Council's involvement in NSIPs in consultation with the Executive Lead Member for Economy, Transport and Environment and, depending on the scale and nature of the project, the Cabinet as appropriate;
- the Scheme of Delegation be reviewed to ensure that decisions at the various stages of the DCO process can be taken at the appropriate level and in an agile way;
- a policy be developed for pre-application charging in relation to NSIPs and included in a Cabinet report for approval;
- Planning Performance Agreements be sought for each project to cover the County Council's costs involved in the DCO process, except for those activities set out in Appendix A of this report, or the Pre-application charging policy be applied in the event that a Planning Performance Agreement is not secured at the earliest stage in the process; and
- decisions on legal support and Counsel representation be taken at an early stage by the Director of Economy, Transport and Environment in consultation with the Head of Legal Services and the Executive Lead Member for Economy, Transport and Environment.

Contextual information

8. A Nationally Significant Infrastructure Project (NSIP) is a large-scale project that falls into one of the following categories:
 - Energy;
 - Waste;
 - Transport;
 - Waste Water;
 - Water; or
 - Business and Commercial.
9. The Planning Act 2008 sets out these categories of projects and provides more detail about the types and scale of infrastructure projects within these categories that are deemed to be nationally significant.
10. This legislation came about due to concerns that approvals for Nationally Significant Infrastructure Projects (NSIPs) were taking too long. Heathrow Terminal 5 was the longest inquiry in British planning history, held between 1995 and 1999, and it took a further two years before the decision was made in November 2001.
11. The Growth and Infrastructure Act 2013 and Infrastructure Planning (Business or Commercial) Regulations 2013 enable the Secretary of State for Business, Energy and Industrial Strategy to direct 'business or commercial' projects into the NSIP regime. This includes developments of a significant scale (typically over 40,000 sqm) which include offices, industrial, research and development, storage and distribution, conferences, exhibitions, sport, leisure and tourism.

12. In addition, a promoter can make a section 35 direction to the relevant Secretary of State to request that a project which falls under any of the categories be directed into the NSIP regime, provided they can demonstrate it is nationally significant. AQUIND made a successful section 35 direction to have its interconnector project deemed a NSIP. The previous interconnector project to be dealt with in Hampshire was determined by Fareham Borough Council through the usual planning application process as only energy generation, and not conversion, and is covered by the Planning Act 2008.
13. A project that is deemed to be nationally significant requires a DCO in order to be delivered. A DCO is a Statutory Instrument, a piece of legislation that gives the promoter all the powers needed to construct the project. Consequently, the DCO can disapply other areas of legislation that may normally apply to a project if it is dealt with through the planning process.

The Process

14. The NSIP process is managed by the National Infrastructure Planning team at The Planning Inspectorate and involves six stages:



15. The County Council is deemed a 'host authority' in respect of the fact it is an upper tier authority and therefore would be invited to be involved in the process for all NSIP projects.
16. The Pre-application stage is led by the applicant and is more akin to the process that the County Council would undertake when a planning application is submitted to a local planning authority. There are various stages of public engagement and consultation, but the key stages of consultation during the pre-application process for the County Council are:
 - Statement of Community Consultation – commenting on the statement and ensuring it meets both the requirements of the regulations and the local needs;
 - Environmental Impact Assessment (EIA) scoping – commenting on the scope of the EIA and highlighting any areas missed or scoped out in error; and

- Preliminary Environmental Information Report (PEIR) statutory consultation – commenting on the proposals as presented within the PEIR and feeding back any issues or concerns to the applicant.
17. Following the PEIR consultation, the applicant is in a position to submit the application providing they can demonstrate that they've taken consideration of consultee responses. The applicant does not necessarily have to address any concerns the County Council may have raised, although they may seek to change the proposals in light of consultee responses prior to submitting the application.
 18. The comments that the County Council make and engagement had with the applicant at the pre-application stage will form the basis of the County Council's representations at the examination. Although not required to engage, it is important that the County Council does in order to protect its position.
 19. Once the applicant has submitted the application to the Planning Inspectorate, it has 28 days within which to accept it. Within that 28-day period it will ask the host authorities to confirm the 'Adequacy of Consultation', which seeks to ensure that the applicant followed the regulations in respect of public engagement and consultation.
 20. Once the application has been accepted the timescales for dealing with it are set out in legislation. In the pre-examination period, which is three months, the County Council will be asked to submit a Relevant Representation. This sets out a summary of the points in the application with which the County Council agrees and/or disagrees, highlighting what is considered to be the main issues and impacts.
 21. Once the examination starts the County Council is responsible for submitting a Local Impact Report (LIR) which goes into more detail about the likely impact of the proposed development on the Hampshire area (or part thereof). The deadline for submitting the LIR is set at the Preliminary Hearing and local authorities are given 28 days' notice of this deadline. However, given the detail expected to be covered in the report, local authorities are strongly encouraged to start drafting the report during the pre-application period, and to ensure that any approval process for the report is built into the timetable. Local authorities are instructed to prioritise preparation of the LIR irrespective of whether they consider the development would have a positive or negative impact on their area.
 22. The examination itself takes six months, and this is a very intensive period. The Examining Authority will consider representations made by interested parties (the County Council will automatically be registered as such) through a series of hearings, and deadlines will be set for those involved in the examination to respond to questions and submissions by the applicant as the examination progresses. Alongside this there will be a need to prepare and agree Statements of Common Ground, Section 106 agreements, and the draft DCO itself. Unlike a planning application, which may take several months of negotiations before a recommendation is made to committee, followed by several months of negotiations on the Section 106 agreement, all matters

relating to the NSIP must be agreed and finalised within the six-month examination period. Anything that is not agreed between parties will be determined by the Examining Authority.

23. Following the close of the examination, the Examining Authority has three months within which to make a recommendation on the application to the relevant Secretary of State. The Secretary of State then has a further three months to make a decision.

Nationally Significant Infrastructure Projects in Hampshire

24. There are a number of these nationally significant infrastructure projects within Hampshire, some of which have been through the examination process and others are expected.
25. Esso submitted an application in 2019 for its Southampton to London Pipeline project, which sought to replace 90km (56 miles) of its existing 105km (65 miles) aviation fuel pipeline. This runs from Fawley Refinery in the New Forest to the West London Terminal storage facility in Hounslow. The Secretary of State for Business, Energy and Industrial Strategy granted the DCO for the project on 7 October 2020.
26. AQUIND Ltd is proposing to construct and operate an electricity interconnector between France and the UK. This would include a new High Voltage Direct Current cable landing at Eastney Portsmouth, and a new converter station in Lovedean, Waterlooville. To get to the converter station in Lovedean, AQUIND proposed to lay the cables in the highway, using the A3 London Road for much of the route. The examination of the application was held between September 2020 and March 2021 and required significant resources from the County Council.
27. Highways England is looking to submit an application early next year for improvements to Junction 9 of the M3 and A34 at Winchester. The scheme seeks to provide a grade-separated free-flow route for traffic travelling from the M3 to the A34 northbound, and vice versa for vehicles traveling from the A34 to the M3 southbound.
28. Associated British Ports outlined in its Port of Southampton Port Master Plan (2016-2035) Consultation Draft proposals to use Strategic Land Reserve at Dibden for future port expansion. It is stated that 'This land will enable the Port to expand as and when the existing port operational areas become utilised to the extent that opportunities for further land use intensification are, in practical and efficiency terms, exhausted'. There are no timescales currently for an application to come forward, however the Southampton Free Port proposals may necessitate proposals being accelerated.
29. Southern Water has recently consulted on its 'Water for Life' strategy which includes proposals to help meet current water shortages and to ensure resilience for the future in times of dry weather and drought. The current preferred solution for making up the shortfall is to install a desalination plant with direct input into the network at Testwood Water Supply Works. Southern Water has stated that it has not yet decided whether or not it will apply for planning permission through the Local Planning Authority or the NSIP regime.

Currently the proposal suggests the plant would deal with 75 million litres per day where the threshold for a NSIP is 80 million litres or above. If Southern Water wishes to have the project dealt with under the NSIP regime it can either increase the scale of the proposal or seek a section 35 direction from the Secretary of State.

Key Issues for the County Council

30. There have been few NSIPs in Hampshire to date, but numbers are expected to increase in the future – particularly as the Government is encouraging use of the NSIP regime to speed up the decision-making process for strategic projects.
31. Once at examination, the NSIP regime requires agility in decision making to ensure the County Council can meet the examination deadlines and respond to issues raised during hearing sessions. However, it is also acknowledged that these projects have the potential to gain significant local and political interest. As such there is a need to put a process in place to ensure members are aware of the proposals and are fully briefed on the issues.
32. The process can be very resource intensive, particularly at the examination stage. Currently the County Council has a limited capacity to resource these projects, particularly given the compressed nature of the process.
33. The process requires a lot of work to be undertaken at the pre-application stage, and there is a risk that this work will be abortive as there is no guarantee an application will be made. For instance, the proposal by Wheelabrator for an Energy from Waste facility at a site on the A303 at Barton Stacey was withdrawn following a significant amount of pre-application discussion, provision of technical comments and liaison with partner local authorities and local members. The County Council did not have a Planning Performance Agreement in place to enable it to recover its costs in dealing with the proposal and, therefore, the time spent on it was at the expense of the County Council. Ensuring that a Planning Performance Agreement is entered into at the earliest opportunity to enable reasonable costs to be recovered in relation to discretionary activities, such as pre-application engagement, must therefore be a priority going forward.
34. To date, the NSIP projects that Hampshire County Council has been involved with have been coordinated by Strategic Planning within the Economy, Transport and Environment department, supported by officers providing technical advice on behalf of the key statutory roles – primarily the Local Highway Authority (including Public Rights of Way) and the Lead Local Flood Authority. The AQUIND project required a significant number of hours to be dedicated to it by the officers involved, including evening and weekend work to ensure deadlines were met. Colleagues from Legal Services were also involved in the examination phase, providing input into the draft DCO and preparing and agreeing the Section 106 and associated Section 111 agreements, which were required to be completed prior to the close of the examination.

35. The urgency of the examination deadlines, and the need to ensure the County Council's position at examination was protected, meant that those officers involved had to focus on the project at the expense of other work. This raises concerns about the County Council's capacity to deal with these projects in the future, particularly if there is more than one going through the process concurrently.
36. For the AQUIND examination the County Council engaged Counsel to represent the authority, due to the complexity of the issues, which was invaluable but costly. Legal Services does have the capacity to support on a lot of the work required, but it may be that some additional external legal resources are needed to supplement this offer due to the concentrated nature of the work and unpredictability of the pipeline of applications.

Proposed Approach to Managing the County Council's Involvement

37. Each NSIP will be different in terms of scale, nature, political interest, technical issues and relationships with partner authorities, and so it is difficult to develop a protocol that will be appropriate to all projects. It is therefore proposed to adopt a set of guiding principles which will help govern how the County Council deals with each NSIP project within Hampshire.
38. The Director of Economy, Transport and Environment is the corporate lead on strategic developments and has the responsibility for directing and managing planning duties, and therefore has delegated authority to approve responses to consultations on NSIPs and agree DCOs. It is proposed that this is done in consultation with the Executive Lead Member for Economy, Transport and Environment and, depending on the scale and nature of the project, the Leader, as appropriate. It will be necessary to review the scheme of delegation to ensure that decisions can be taken on technical matters at the appropriate level and within the tight timescales required.
39. The Corporate Infrastructure Group is a good forum for keeping senior officers from across the County Council updated on NSIP projects. It is proposed that a sub-group be established to track which projects are coming forward, keep interested service areas updated and report key issues to the main group.
40. The Planning Inspectorate Advice Note two: 'The role of local authorities in the development consent process', makes it clear that local authorities are not obliged to participate in the DCO process, but it is strongly encouraged. As such it is reasonable for the County Council to seek to cover its costs in engaging in the process and working proactively with the applicant on issues as they arise through a Planning Performance Agreement (PPA).
41. Securing a PPA with the applicant will provide the funding to enable sufficient resources to be put in place to deal with the application. Whilst engaging consultants under the framework agreement may be one way of resourcing such projects, the preferred approach would be to use existing staff with the necessary experience and knowledge to deal with the proposal in-house. Funding through the PPA could then be used to provide resources to back-fill for those officers involved, particularly during the six months of examination when officers are likely to be required on the DCO project full time.

42. The County Council currently operates two pre-application charging policies which enable both the Minerals and Waste Planning Authority and the Local Highway Authority to cover the cost of engaging with applicants while applications are being developed. These policies were developed to ensure that applications submitted include all of the necessary information and meet the requirements of both authorities, and to cover the cost of any engagement should the proposal not be progressed to application stage.
43. It is proposed that a pre-application charging policy be developed for NSIPs to cover the process up to the point that the application is submitted. This will ensure that it can sufficiently resource the pre-application stage in the event that an applicant is not prepared to provide the County Council with a PPA.
44. Whilst there is no part of the process where the County Council is required to respond, it is acknowledged that there will be an expectation from the Examining Authority that, as a Host Authority, the County Council will participate. Therefore, Appendix A to this report sets out the activities that the County Council would not seek to be reimbursed for. Once the application is submitted, it is proposed that the County Council concentrate its resources on these activities if a PPA is not secured.
45. It will be necessary to assemble a multi-disciplinary team representing the key services areas impacted by the project. Coordinated by Strategic Planning, officers needed will most likely be representatives of the Local Highway Authority including Public Rights of Way, and the Lead Local Flood Authority. There may be other areas of the County Council that will need to be involved but those can be identified on a project-by-project basis.
46. Following the declaration of a Climate Emergency, and the adoption of the Climate Change Strategy and Action Plan, the County Council will want to ensure that any NSIP proposals that come forward are consistent with these objectives. Proposals that come forward through the NSIP regime must comply with the National Planning Statements, National Planning Policy Framework and relevant local plan policies, rather than the County Council's own Climate Change Strategy. However, planning policies relating to climate change will provide a sufficient hook to enable the County Council to comment in this regard.
47. It is proposed that a decision be taken at an early stage on what legal support will be required for the project and whether Counsel should be instructed to represent the County Council at examination. This decision will be taken based on the complexity of the project and the likely issues by the Director of Economy, Transport and Environment in consultation with the Head of Legal Services.

Equalities Impact Assessment

48. The approach that the County Council is taking to Nationally Significant Infrastructure Projects is intended to benefit all communities in Hampshire. It is considered that there will be no additional impact on people with protected characteristics and therefore the strategy has been assessed as having a neutral impact overall.

Climate Change Impact Assessments

49. Hampshire County Council utilises two decision-making tools to assess the carbon emissions and resilience of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.
50. The climate change tools were not applicable because this is a report relating to the strategic approach taken by the County Council when consulted on NSIPs and therefore does not require a climate change assessment. The NSIPs themselves may have an impact on climate change and this can be considered by the County Council in its consultation response for each specific project.
51. By ensuring that there is a protocol for dealing with NSIPs the County Council can ensure that these projects contribute positively to each of the strategic objectives, or conversely identify where there is potential conflict with the priorities and make appropriate representations.

Conclusions

52. The Development Consent Order process is one that is likely to be used more frequently in the future for strategic infrastructure projects. Several issues that this type of project raises for the County Council are explored in this report, and the recommendations aim to help address these and ensure that we have a set of guiding principles for dealing with these projects in the future.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	yes
People in Hampshire live safe, healthy and independent lives:	yes
People in Hampshire enjoy a rich and diverse environment:	yes
People in Hampshire enjoy being part of strong, inclusive communities:	yes
OR	
This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:	

Other Significant Links

Links to previous Member decisions:	
<u>Title</u>	<u>Date</u>
Direct links to specific legislation or Government Directives	
<u>Title</u>	<u>Date</u>

Section 100 D - Local Government Act 1972 - background documents	
<p>The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</p>	
<u>Document</u>	<u>Location</u>
None	

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

The approach that the County Council is taking to Nationally Significant Infrastructure Projects is intended to benefit all communities in Hampshire. It is considered that there will be no additional impact on people with protected characteristics and therefore the strategy has been assessed as having a neutral impact overall.

Appendix A:

Activities that the County Council will not seek reimbursement for through a Planning Performance Agreement:

- Responding to the EIA Scoping Consultation;
- Statutory Consultation on draft Statement of Community Consultation;
- Responding to the Statutory Pre-application Consultation;
- Issuing an Adequacy of Consultation response;
- Providing a Relevant Representation;
- Attending the Preliminary Hearing;
- Preparing the Local Impact Report;
- Written Representations;
- Attendance and participation at Hearings;
- Answering questions from the Examining Authority; and
- Any other activity directed by the Examining Authority.